

w/0

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI**

FILED
4:11 O'Clock *P.M.*
SEP 23 2011
SANDRA K. MARKHAM, Clerk
By: *B. Chamberlain*

DIVISION PRO TEM B

HON. WARREN R. DARROW

By: Robin Gearhart
Judicial Assistant

CASE NUMBER: V1300CR201080049

Date: September 23, 2011

TITLE:

COUNSEL:

STATE OF ARIZONA

Sheila Sullivan Polk
Yavapai County Attorney
Bill Hughes, Esq.
Deputy Yavapai County Attorneys

(Plaintiff)

(For Plaintiff)

vs.

JAMES ARTHUR RAY

Thomas K. Kelly, Esq. (e)
425 E. Gurley
Prescott, AZ 86301

Luis Li, Esq.
Brad Brian, Esq.
Truc Do, Attorney at Law
Miriam Seifter, Attorney at Law
MUNGER TOLLES & OLSON LLP (e)
355 S. Grand Avenue, 35th Fl.
Los Angeles, CA 90071

(Defendant)

(For Defendant)

**RULING RE:
DEFENDANT JAMES ARTHUR RAY'S REQUEST TO FILE AFFIDAVIT UNDER SEAL**

The Defendant has asked that Thomas Kelly's affidavit submitted in support of the motion to continue the presentence hearing and sentencing be filed under seal for the reason that it contains "sensitive personal information."

Rule 123(c) of the Rules of the Supreme Court of Arizona recognizes and codifies Arizona's "Open Records Policy" as this policy relates to judicial records.

Historically, this state has always favored open government and an informed citizenry. In the[sic] tradition, the records in all courts and administrative offices of the Judicial Department of the State of Arizona are presumed to be open to any member of the public

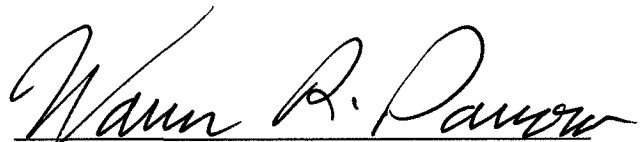
Rule 123(c) also provides that "in view of countervailing interests of confidentiality, privacy or the best interests of the state public access to some court records may be restricted or expanded in accordance with the provision of this rule, or other provisions of law."

This Court is aware of its duty to protect both the public's interest in open government, which includes the public's strong interest in transparency in the criminal trial process, and the important privacy interests of persons involved in any capacity in the legal system. When these interests conflict, the Court must attempt to weigh the interests and rule accordingly.

The Court first notes that the affidavit provides little medical information beyond what was properly conveyed to the Court and the State at the telephonic conference conducted on September 20. Furthermore, the information is being conveyed to support a motion for this Court to continue a crucial phase of this case – the presentence hearing and sentencing. The decision on this issue seriously affects the Defendant, the victims, numerous witnesses and others. Although there may be some exceptions not pertinent here, the bases and reasons for a court's decision cannot be shielded from the public's view. Thus, if the defense believes that there are specific items of medical information that should be removed, an appropriately redacted copy of the affidavit may be submitted for the Court's consideration within three (3) days of the filing of this order.

IT IS ORDERED *denying* the request to seal the affidavit but directing that the affidavit not be filed until September 28, 2011. In the event a redacted version is filed, the original affidavit will not be filed until further order of the Court.

Dated: This 23rd day of September, 2011


HON. WARREN R. DARROW
Judge of the Superior Court

cc: Victim Services Division